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SUBJECT: ANOTHER ATPDEA DISPUTE OVER; LUZ DEL SUR AND
ENGELHARD ONE STEP CLOSER

REF: Lima 995

1. (SBU) Summary. Good news on three commercial disputes. Arcadis signed its contract for an environmental remediation project, completely resolving that dispute. In the Luz del Sur case, The Tax Court has a new valuation of the U.S. company's assets (similar to the firm's initial appraisal) and should issue a final resolution by mid-May. The Superior Court last week held an oral hearing to introduce the new justice to the Engelhard dispute. The new justice could issue a ruling within a month, perhaps by early June, which could be the deciding vote to resolve the administrative case. End Summary.

Arcadis Dispute Resolved

2. (U) After several delays, Arcadis finally signed its contract with PlusPetrol for the Lot 8 environmental remediation project in Loreto Department on April 29. According to Herman Barrios, Arcadis legal counsel, Arcadis should begin work in the next few weeks.

Luz Del Sur Valuation Complete,
Final Tax Court Ruling Next

3. (SBU) GOP appraisers in CONATA finished their asset valuation of Luz del Sur (owned by U.S. companies PSEG and Sempra Energy). Except for a small discrepancy, the results largely coincided with the U.S.-owned company's initial appraisal. With interest and penalties, the company expects it will have to pay approximately \$1-1.5 million. The Tax Court now has the valuation and is expected to issue a final resolution by May 15.

New Judge Hears Engelhard Case

4. (SBU) On March 1, the Superior Court justices issued a split decision, 2-1, in favor of Engelhard. Peruvian law dictates that the winning side must have a minimum of three votes in its favor. Because the Superior Court could not issue a decisive ruling, an additional justice was brought in to issue an opinion on the Engelhard case. On April 28, the new Superior Court justice listened to oral arguments. This judge could issue her decision in approximately one month, perhaps by early June.

5. (SBU) If the judge sides with the two Superior Court judges who voted in favor of Engelhard, the Superior Court would return the case to the Tax Court with instructions to disregard all the irregular actions of third parties cited in the file and drop the IGV tax law article used to justify SUNAT's withholding of the company's tax rebate for exported gold. Under this scenario, Engelhard's local attorney estimated that the Tax Court could issue a final ruling a month after the Judge's vote, perhaps in July to resolve the administrative case.

Princeton Dover Waiting for final Judge's Opinion

6. (U) The Superior Court issued a split decision, 2-1, against Princeton Dover in early March. Similar to the Engelhard case, the winning side must have a minimum of three votes in its favor. Shortly after the April 14 hearing, the fourth justice sided with Princeton Dover, making the count 2-2. A hearing is scheduled on May 24 to inform a fifth judge about the case. If Princeton Dover prevails, the Tax Court would be instructed to issue a final ruling in the case (and not wait until the criminal case concludes).

Comment: Making Progress

7. (SBU) GOP Disputes Coordinator Aurelio Loret de Mola has

kept the ATPDEA dispute resolution process on track. We expect the Northrop Grumman and Luz del Sur disputes to be fully resolved in May or June. That leaves us with pending judicial decisions for Engelhard and Princeton Dover. The only dispute lacking strong progress is that of LeTourneau, which will require more time and a concerted effort on both sides at finding an agreeable compensation figure. We will continue work closely with Loret de Mola on the remaining cases.

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